SUMMARY DESCRIPTION OF SUPERFUND TAX AND TRUST FUND PROVISIONS UNDER PRESENT LAW AND H.R. 5640 AS REPORTED BY HOUSE COMMITTEE ON ENERGY AND COMMERCE

Scheduled for Markup

by the

COMMITTEE ON WAYS AND MEANS

on August 1, 1984

Prepared by the Staff
of the
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INTRODUCTION

The Committee on Ways and Means has scheduled a markup on August 1, 1984, on the tax and trust fund provisions of H.R. 5640 (Superfund Expansion and Protection Act of 1984), as reported by the House Committee on Energy and Commerce (H.Rep. No. 98-890, Part 1; July 16, 1984). H.R. 5640 was referred jointly to the Committees on Energy and Commerce and Public Works and Transporation and the Committee on Ways and Means. This document provides a summary comparative description of the Superfund tax and trust fund provisions under present law and H.R. 5640 as reported by the Committee on Energy and Commerce.

The document is divided into five parts. Part I describes the Hazardous Substance Response Trust Fund; part II describes the petroleum tax; part III describes the tax on feedstock chemicals; part IV describes the proposed waste end tax; and part V describes the Post-Closure Liability Trust Fund and tax. Finally, the Attachment provides a comparative listing of the current and proposed (under H.R. 5640) tax rates on feedstock chemicals.

Item	Present Law	H.R. 5640
I. Hazardous Substance Response Trust Fund		
A. Overall funding level	Provides for deposits of tax revenues and general revenue appropriations intended to total $1.6 billion into the Hazardous Substance Response Trust Fund ("Superfund") for fiscal years 1981-1985.	Provides for deposits (tax revenues and general revenue appropriations) into Superfund intended to total $9.5 billion for fiscal years 1986-1990. (Estimated deposits are $8.8 billion.)
B. General revenue appropriations	There is authorized to be appropriated to the Trust Fund an aggregate of $220 million over fiscal years 1981 through 1985 ($44 million per year) from general revenues. (For 1985, there may also be appropriated an additional amount to cover amounts authorized but not appropriated for 1981-84.)	There would be authorized to be appropriated to the Trust Fund from general revenues, an aggregate of $1.13 billon over the fiscal year 1986 to 1990 period: (1) $181 million per year for fiscal years 1986 and 1987, (2) $256 million per year for fiscal years 1988, 1989, and 1990, and (3) for each year, an amount equal to previously authorized but unappropriated amounts.

Item	Present Law	H.R. 5640
C. Excise taxes	The remainder ($1.38 billion) of the $1.6 billion funding level is derived from excise taxes on: (1) petroleum and petroleum products; and (2) feedstock chemicals.	The remainder ($8.4 billion) of the intended $9.5 billion funding level would be derived from excise taxes on: (1) petroleum and petroleum products; (2) feedstock chemicals; (3) imported chemical substances; and (4) disposals of hazardous waste.
D. Other financing sources	The following amounts are also deposited in the Hazardous Substance Response Trust Fund: (1) Amounts recovered from parties responsible for hazardous substance releases; (2) Penalties assessed against responsible parties; (3) Punitive damages for failure to provide removal or remedial action upon order of the President; and (4) Interest on Trust Fund balances.	Same as present law.

Item	Present Law	H.R. 5640
E. Expenditure purposes	Amounts in the Trust Fund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances (other than crude oil or petroleum products) into the environment.	Changes definition of hazardous substance to include petroleum released from an underground storage tank or which may present a significant risk to human health.
	Allowable costs include:	
	(1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action;	(1) Same as present law.
	(2) certain costs related to response including damage assessment, epidemiologic studies, and maintenance of emergency strike forces; and	(2) Same as present law plus: costs incurred in connection with emergency relief and health effects studies; costs incurred in preparing toxicological profiles of certain hazardous substances; and costs incurred in evaluating potential hazards posed by facilities pursuant to petitions filed by any person.
	(3) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by Federal or State governments.	(3) Same as present law.

Item	Present Law	H.R. 5640
F. Limitation on natural resource damage claims	Not more than 15 percent of Trust Fund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. If claims against the Trust Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they were finally determined. No claims may be repaid from sources other than the Trust Fund.	Same as present law, except that not more than 6 percent of Trust Fund receipts attributable to taxes and general revenue appropriations may be used for payment of natural resource damage claims.
G. Borrowing authority	The Trust Fund has authority to borrow for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource claims. Outstanding advances at any time may not exceed estimated tax revenues for the following 12 months; advances for paying natural resource claims may not exceed 15 percent of such revenues. All advances must be repaid by September 30, 1985.	Same as present law, except that advances must be repaid by September 30, 1990. Effective date.--October 1, 1985.

Item	Present Law	H.R. 5640
II. Petroleum tax		
A. Imposition of tax	An excise tax of 0.79 cents per barrel is imposed on (1) crude oil received at a U.S. refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the U.S. for consumption, use, or warehousing.	Increases tax rate to 4.5 cents per barrel. Effective date.--October 1, 1985.

Item	Present Law	H.R. 5640
B. Termination date	The tax expires on September 30, 1985. The tax is suspended for the next calendar year if -- (1) on September 30, 1983, or 1984, the fund balance exceeds $900 million and (2) absent the petroleum and feedstock taxes, the fund would exceed $500 million on the next September 30. (As of September 30, 1983, the unobligated balance in the Fund was approximately $332.8 million.) Further, authority to collect the tax would terminate when cumulative receipts from petroleum tax and feedstocks chemicals tax reach $1.38 billion.	The tax would expire on September 30, 1990. Under an amendment recommended by the Committee on Energy and Commerce, the tax would be suspended for the next calendar year if -- (1) the fund balance were to exceed $3.2 billion on September 30, 1988 or 1989, and (2) absent the petroleum and feedstock taxes, the fund would exceed $1.9 billion on the next September 30. Revenue effect (not including change in income tax receipts).-- Fiscal year 86 ------- $230 million 87 ------- 243 million 88 ------- 242 million 89 ------- 242 million 90 ------- 240 million 91 ------- 13 million 1986-91 $1,210 million

Item	Present Law	H.R. 5640
III. Tax on feedstock chemicals		
A. Imposition of tax	A tax is imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer, at the rates listed in Table A (attached). The feedstock chemicals tax applies to chemicals manufactured in the U.S. (as defined for purposes of the petroleum tax) or imported into the U.S. for consumption, use, or warehousing. If a taxpayer uses a taxable chemical prior to sale, the tax is imposed on such use. Where one taxable chemical is used to produce a second, the tax on the first chemical is allowed as a credit against the second tax (to the extent of that second tax).	Extends the present law tax on feedstock chemicals; increases the rates for most taxable chemicals; adds 20 additional feedstocks to the list of taxable chemicals and deletes 3 feedstocks (as listed in Table A). Effective date.--October 1, 1985.

Item	Present Law	H.R. 5640
B. Exceptions to tax	Exceptions to the feedstock chemicals tax are provided for:	Modifies present law exceptions as follows:
	(1) Butane or methane used as a fuel.	(1) Same as present law.
	(2) Nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer.	(2) Retains present law exception. Under an amendment recommended by the Energy and Commerce Committee would extend exception to apply to phosphoric acid used to produce fertilizer.
	(3) Sulfuric acid produced solely as a by-product of (and on same site as) air pollution control equipment.	(3) Same as present law.
	(4) Any substance to the extent derived from coal.	(4) Repealed for certain coal-derived substances.
	(5) Petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel (exception added by Tax Reform Act of 1984).	(5) Repealed.
	(6) Cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide which exist in transitory form in the process of refining non-taxable metal ores or compounds into other (or purer) non-taxable compounds.	(6) Under an amendment recommended by the Energy and Commerce Committee, exceptions would be provided for: (a) Nonferrous metallic compounds which have a transitory presence during any process of smelting, refining, or otherwise extracting metals from metal-bearing substances which are not themselves subject to the tax.

Item	Present Law	H.R. 5640
		(b) Nonferrous metals present in ores, concentrates, or other pre-refining metal-bearing material, before the state of processing at which the metal is commercially known or sold as such.
	(7) No provision.	(7) Under an amendment recommended by the Committee on Energy and Commerce, the following special rules would be provided:
		(a) Exemption for any metal which (i) has previously been taxed in the same production and use; (ii) is produced from new scrap from metal previously taxed in the same cycle of production and use; or (iii) is contained in a fabricated product, alloy or compound when such metal was previously taxed in the same cycle of production and use.

Item	Present Law	H.R. 5640
		(b) Reduce tax rate by up to 50 percent for recycled metals (including aluminum, chromium, cobalt, lead, nickel, and other metals recovered or diverted from solid waste), if a determination has been made regarding the effect of such reduction on Superfund revenues transferred to the fund and the effect of the tax rate on the recycling industry. This reduction would not apply to taxpayers failing to comply with certain orders or judgments under certain environmental statutes.
	(8) No provision.	(8) Under amendment recommended by the Committee on Energy and Commerce, a credit or refund would be allowed for tax on any feedstock chemical which is shipped (directly or indirectly) for export.

Item	Present Law	H.R. 5640
C. Environmental tax on imported chemical products	No provision.	Under amendment recommended by the Energy and Commerce Committee, a 5-percent tax would be imposed on certain imported products produced directly and substantially from feedstock chemicals. Taxable substances and the extent to which they are taxed would be defined in Treasury regulations. The tax on imported chemical substances would be paid by the importer or ultimate purchaser of the taxable product. If a previously taxed feedstock chemical is used to produce a taxable imported substance, the feedstock tax would be refunded or credited against the import tax. No tax would be imposed if the feedstock used to produce an imported substance would itself be exempt if the feedstock were produced or imported into the United States. Under Treasury regulations, a taxpayer who can establish the amount of feedstock chemicals used to produce an imported substance would have the option to pay the feedstock tax on these chemicals in lieu of the tax on the imported substance.

Item	Present Law	H.R. 5640
D. Expiration of tax	The tax expires on September 30, 1985, or earlier under conditions specified for the petroleum tax.	The tax (including the tax on imported chemical substances) would expire on September 30, 1990. Under an amendment recommended by the Energy and Commerce Committee, these taxes would also be suspended for certain periods under conditions specified for the petroleum tax. Revenue effect (not including change in income tax receipts).-- Fiscal year 86 ------- $938 million 87 ------- 1,081 million 88 ------- 1,127 million 89 ------- 1,170 million 90 ------- 1,211 million 91 ------- 66 million 1986-91 $5,593 million
IV. Waste end tax		
A. Imposition of tax	No provision.	Imposes a tax on the disposal of any hazardous substance which is required to be carried out in compliance with Subtitle C of the Resource Conservation and Recovery Act (RCRA). The rate of tax would depend on the amount of the hazardous substance, the release of which must be reported under CERCLA:

Item	Present Law	H.R. 5640
		(1) for hazardous substances with a reportable quantity of more than one pound the tax would be $10 per metric ton ($5 in the case of underground injection) on a wet-weight basis, and (2) for hazardous substances with a reportable quantity of one pound or less, the tax would be $30 per metric ton on a wet-weight basis ($15 in the case of underground injections, but reduced to $5 under an amendment recommended by the Energy and Commerce Committee). The tax would be paid by the owner or operator of a facility for which a permit is in effect under Subtitle C of RCRA (for a disposal other than at a permitted facility, the tax would be paid by the person disposing of the hazardous substance). Hazardous waste which has been stored for a one-year period would be treated as disposed of on the first day after the end of such one-year period and the waste end tax would be payable on that day. No further tax would be imposed upon a later disposal of the waste. Effective date.--January 1, 1987.

Item	Present Law	H.R. 5640
B. Exemptions from tax	No provision.	The following disposals of hazardous substances would be exempt from the waste end tax: (1) The disposal of any substance in the course of carrying out a removal or remedial action under CERCLA (including private emergency removals). (2) The disposal of any substance by incineration in accordance with standards applicable to incineration facilities permitted under Subtitle C of RCRA. (3) The disposal of any solid waste required to be studied under section 8002(f) or (p) of the Solid Waste Disposal Act. (These include certain wastes indigenous to the extraction of nonferrous metals.) The following additional exemptions would be provided under amendments recommended by the Energy and Commerce Committee: (4) Treatment of any substance in waste water facilities utilizing biological activity or carbon adsorption treatment processes in accordance with standards applicable under Subtitle C of RCRA.

Item	Present Law	H.R. 5640
		(5) The disposal of any substance for energy recovery in accordance with standards applicable to energy recovery facilities permitted under Subtitle C of RCRA. This exemption would apply only if a study commissioned by EPA certifies that such facilities are in compliance with applicable RCRA destruction efficiency standards.
C. Termination date	No provision.	The tax would terminate on September 30, 1990.

Revenue effect (not including change in income tax receipts).--

Fiscal year		
86	-------	$ 0 million
87	-------	170 million
88	-------	244 million
89	-------	244 million
90	-------	244 million
91	-------	18 million
1986-1991		$920 million

Item	Present Law	H.R. 5640
V. Post-closure Liability Trust Fund and Tax		
A. Post-closure trust fund	The Post-closure Trust Fund is to assume completely the liability, under any law (including CERCLA), of owners and operators of hazardous waste disposal facilities which have been granted permits and have been properly closed under Subtitle C of RCRA. This transfer of liability to the fund may take place after-- (1) the owner and operator of the facility has complied with the RCRA requirements which may affect the performance of the facility after closure, and (2) the facility has been monitored for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any release of a hazardous substance or other risk to public health or welfare will occur. The Post-closure Trust Fund also may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by RCRA.	Repeals the Post-closure Trust Fund. Effective date.--Date of enactment.

Item	Present Law	H.R. 5640
	Claims against the Post-closure Fund may be paid only out of the fund. If, at any time, claims against the fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined. The Post-closure Fund is subject to the same administrative provisions as the Hazardous Substance Response Trust Fund, including the right to borrow limited amounts from the treasury as repayable advances. No more than $200,000 of such advances may be outstanding at any time.	
B. Tax on hazardous wastes ("post-closure tax")	Imposes an excise tax of $2.13 per dry weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applies only to hazardous waste which will remain at the facility after the facility is closed. The tax is imposed on the owner or operator of the qualified hazardous waste disposal facility. For purposes of the post-closure tax, hazardous waste means any waste-- (1) having the characteristics identified under section 3001 of the	Repeals the post-closure tax and refunds previously paid taxes. Effective date.--Date of enactment. Revenue effect (excluding change in income tax receipts).-- Fiscal years 85 ------- $-18 million 85-91 $-18 million

Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date); and

(2) which is subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect on that date.

Qualified hazardous waste disposal facilities are facilities which have received a permit or been accorded interim status under the Solid Waste Disposal Act.

Termination date.--The post-closure tax applies to the receipt of hazardous waste after September 30, 1983. However, if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure liability trust fund were to exceed $200 million no tax would be imposed during the following calendar year.

Further, the authority to collect the tax terminates--

(1) when cumulative receipts from the petroleum and chemical taxes described above reach $1.38 billion, or

(2) if earlier, after September 30, 1985.

ATTACHMENT

Table A--Current and Proposed Feedstock Tax Rates
(rate per ton)

Chemical	Current Law	H.R. 5640
Petrochemicals (organic chemicals)		
Acetylene	$4.87	$29.87
Benzene	4.87 1/	14.88
Benzene (mixed into gasoline)	0	2.88
Butadiene	4.87	24.80
Butane	4.87	7.09
Butylene	4.87	9.92
Coal-derived light oils	0	10.63
Coal tars	0	3.93
Ethylene	4.87	17.71
Methane	3.44	2.48
Napthalene	4.87 1/	13.82
Propylene	4.87	13.82
Toluene	4.87 1/	12.75
Toluene (mixed into gasoline)	0	2.88
Xylene	4.87 1/	13.11
Xylene (mixed into gasoline)	0	2.88
Inorganic chemicals		
Aluminum	0	1.53
Ammonia	4.45	7.44
Antimony	4.45	14.94
Antimony trioxide	3.75	14.94
Arsenic	4.45	14.94
Arsenic trioxide	3.41	14.94
Asbestos	0	13.92
Barium sulfide	2.30	14.94
Boron trioxide	0	14.94
Bromine	4.45	14.94
Cadmium	4.45	14.94
Chlorine	2.70	5.67
Chromite	1.52	2.55
Chromium	4.45	14.94
Cobalt	4.45	14.94
Copper	0	0
Cupric oxide	3.59	14.88
Cupric sulfate	1.87	14.88
Cuprous oxide	3.97	14.88
Hydrochloric acid	0.29	0.34
Hydrogen flouride	4.23	14.94
Lead	0	14.94
Lead oxide	4.14	0
Lithium carbonate	0	14.94
Manganese	0	2.77
Mercury	4.45	14.94

Nickel	4.45	14.94
Nitric acid	0.24	0.28
Phosphoric acid	0	0.30
Phosphorous	4.45	14.94 2/
Potassium dichromate	1.69	14.94
Potassium hydroxide	0.22	0.26
Selenium	0	14.94
Sodium dichromate	1.87	14.94
Sodium hydroxide	0.28	0.33
Stannic chloride	2.12	14.94
Stannous chloride	2.85	14.94
Sulfuric acid	0.26	0.31
Uranium oxide	0	1.44
Vanadium	0	2.48
Zinc	0	14.94
Zinc chloride	2.22	0
Zinc oxide	0	0
Zinc sulfate	1.90	0

1/ Coal-derived benzene, naphtalene, toluene, and xylene are exempt under current law. These substances would be taxed at the indicated rates under H.R. 5640.

2/ Phosphorous would be taxed at $6.65 per ton under an amendment to H.R. 5640 recommended by the Committee on Energy and Commerce.